IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12247 of 2006
Date of decision: 13.10.2006

M/s BR Enterprises through its Proprietor, Mr. Bakshi Ram, 278, Guru Amar Dass Nagar, Jalandhar.

....Petitioner

versus

Commissioner of Customs, Inland Container Depot Tughlakabad, New Delhi.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jagmohan Bansal, Advocate, for the petitioner.

Mr. Sanjiv Kaushik, Advocate, for the respondents.

JUDGMENT:

1. This writ petition has been filed for a direction to Custom authorities to release the material of the petitioner lying at the Port and to allow cost of demurrage.

2. Case of the petitioner is that it bought goods i.e., hand-tools on 4.9.2002 for export. On examination of the consignment, the goods were seized on the allegation that the same were liable for confiscation under the provisions of the Customs Act, 1962 (for short, 'the Act') on 3.10.2002. Thereafter, neither any show cause notice was issued under section 110(2) read with Section 124 of the Act nor the goods were released. On expiry of the period specified under the said provisions, the authorities could not confiscate the goods. On 25.4.2003, the show cause notice was given in extended period which was set aside by the Tribunal on 10.12.2003 vide order Annexure P.1. Thereafter, investigation was completed vide order dated 13.4.2005, Annexure P.2. Relevant observations and findings in the order are extracted below:-

"68. Market enquiries were conducted on 25.8.2003 to

ascertain the value of goods declared by the exporters in their invoices. The comparison as detailed below reflects that the FOB value was highly inflated to cover the excess weight declared by the exporter in their aforesaid shipment:

S.No.	Item	Declared FOB	Value as per M.E.
xx	xx xx	xx	xx
	M/s B.R. Enterprises		
1.	Combination Spanner set of 14 pcs.	91.66	74.00
2.	Ring Spanner set of 12 pcs.	145.50	77.00
3.	Combination Spanner 6 mm to 22 mm	53.35	40.00
4.	DOE Spanner 6 pcs. set	87.30	13.00
5.	DOE Spanner 8 pcs. set	97.00	24.00
6.	Ring Spanner 6x7 mm, 8 & 9 mm., 12 & 13 mm	9.70	8.88
7.	Combination Spanner	9.70	2.96
xx	xx xx	xx	xx

"77. From the foregoing, it also appears that:-

a) xx xx xx xx

b) xx xx xx xx

c) Shri Bakshi Ram, proprietor of M/s B.R. Enterprises in connivance with Shri Ashok Kumar and Shri Jai Singh filed export documents i.e., invoice and packing showing excess weight, value and misdeclared the description of export goods/consignment to avail undue export benefits fraudulently at ICD, Patparganj. It also appears that Shri Ashok Kumar was real beneficiary and Shri Bakshi Ram was shown as proprietor of M/s B.R. Enterprises for name sake only as stated by S/Shri Jai Singh and D.K. Singhal in their statements recorded under Section 108 of Customs Act, 1962. The fact is also clear from the statement of Shri Bakshi Ram as he could not provide the name, telephone number and place where his overseas buyer was situated. He has also opened his Delhi

office in the premises occupied by Shri Jai Singh."

xx xx xx xx xx

"105. M/s B.R. Enterprises have attempted to export a total number of 1048 Cartons under Invoice No.BRE/12/2002 both dated 19.08.2002 containing spanners and Ring Spanners in the guise of Cobalt bearing tools bit with declared FOB Value of Rs.33,85,397/-. On Market Enquiry the value of the spanner set has been found to be from Rs.2.96 to Rs.74/- pre spanner set against the declared FOB value of Rs.9.70 to Rs. 91.66 per set."

xx xx xx xx xx

"112. From all above I conclude that

(i) xx xx xx xx

(ii) xx xx xx xx

"(iii) M/s B.R. Enterprises have attempted to fraudulently export 1048 Carton weighing g22919 Kgs of combination spanners ring spanner with highly inflated declared FOB value of Rs.3385397/-in the guise of cobalt bearing tools bit so as to avail under DEPB/DFRC/DBK benefit and the said goods are liable to be confiscated under section 113(i) of the Customs Act, 1962. M/s B.R. Enterprises have also rendered themselves for penal action under section 114 (iii) of the Act ibid."

xx xx xx xx

In view of the above findings I order:-

1. xx xx xx xx

2. xx xx xx xx

3. The goods of declared FOB value Rs.33,85,397/- attempted to be exported by M/s B.R. Enterprises are held liable for confiscation under Section 113 of the Customs Act, 1962. However, these goods

> may be released as per Hon'ble CEGAT's Final order No.A/1997-1500/03-NB(SM) dt. 10.11.03. A penalty of Rs.12,00,000/- (Rupees Twelve Lakhs only) is also imposed on them under Section 114 (iii) of the Customs Act, 1962.
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> xx xx xx xx xx"

Finally, it was held that though the goods were liable to be confiscated under section 113 of the Act, the same were required to be released in view of the order of the Tribunal dated 10.12.2003. However, a penalty of Rs.12,00,000/- was levied under section 114(iii) of the Act. Against penalty order, the petitioner preferred an appeal before the Tribunal, which was pending.

3. In the reply filed, it has not been disputed that the period for taking action for confiscation of goods of the petitioner has expired and the goods have been ordered to be released, though it was held that the same were liable for confiscation. It is further submitted that the Tribunal has granted stay on 11.8.2005 for depositing the amount imposed as penalty in an application for waiver of pre-deposit for hearing of the appeal, taking into account the fact that the goods were in the custody of the department.

4. Learned counsel for the petitioner submitted that since the goods had been illegally detained, the petitioner was entitled to damages. Reliance has been placed on judgment of the Hon'ble Supreme Court in **Union of India v. Sanjeev Woollen Mills**, 1998(100) ELT 323.

5. We are unable to accept this submission. Admittedly, the period of six months from the date of detention of goods expired on 3.4.2003. The order extending period for issuing show cause notice was set aside on 10.12.2003. The writ petition has been filed on 7.8.2006.No explanation is coming forth from the petitioner for having not moved this court earlier. The conduct of the petitioner has also been found to be contumacious. We are not, thus, inclined to give any direction on the issue of damages.

6. In view of undisputed facts that the goods cannot be confiscated as no proceedings for confiscation were pending and there are directions of the Tribunal for release of goods, we have no option but to direct release of the goods within two months from the date of receipt of a

copy of this order. We, however, direct that the respondents will be at liberty to seek vacation of order passed by the Tribunal on the ground that the goods were in the custody of the department.

7. The writ petition is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

Oct. 13, 2006
'gs'

(Rajesh Bindal)
Judge